

The imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. (This is a PLR).

May 16, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of April 10, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, AAA and its subsidiary (BBB) we respectfully request that the Illinois Department of Revenue (the 'Department') issue a Private Letter Ruling ('PLR') pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

***General Information***

Enclosed please find Form IL-2848 Power of Attorney, authorizing FIRM to represent the BBB before the Department to obtain a PLR on their behalf.

This PLR is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailer's Occupation Tax consequences of the actual business practice of the Company.

The Company is not currently engaged in litigation with the Department with regard to this or any other tax matter.

The Company requests that certain information be deleted from the PLR prior to dissemination to others. The Company requests that its name, address, and the name of its representative, as well as the names of the Company's Illinois locations be deleted.

***Statement of Material Facts***

The Company's headquarters are located in CITY/STATE. In addition, the Company maintains two office locations in Illinois ('Office A' and 'Office B'). Office A is located in CITY, Illinois, which consists of a branch sales and shipping warehouse for a unique product group. Office B is located in CITY2, Illinois and is staffed by an Illinois Credit Analyst ('Analyst'), who reports to the Operations Manager and the Credit Manager.

A customer wishing to make a purchase from the Company requests pricing information from the Company's sales department. Customers can order products either via telephone, internet or through the use of a sales representative. All orders for the BBB are entered into the Company's order entry system ('OES') located in STATE. OES determines the credit worthiness of a customer based on predetermined parameters established and reviewed by the Credit Representative. If all required parameters are satisfied, OES releases a conditionally approved order. All conditionally approved Illinois orders are batched and sent to the analyst for validation of all necessary order information (i.e., name, address, quantity and price). If OES establishes a hold on a customer order, either because a customer has exceeded their credit limit or the customer's account is past due, a report is generated listing all 'pending credit' customers ('Pending Credit Report').

On a daily basis, the Analyst receives an electronic report (i.e., sales journal) detailing all orders placed that day for shipment to Illinois which are currently in conditionally approved status. The Analyst reviews the conditionally approved orders, electronically signs an Illinois Authorization Form, and transmits the Illinois Authorization Form back to the STATE office indicating Illinois approval of the respective batch of orders. The Analyst's validation of all conditionally approved orders and the subsequent signing of the Illinois Authorization Form changes those conditionally approved orders to final approved orders. It is this act of validating and subsequently approving all Illinois conditionally approved orders that is the final action necessary to bind the company to an unconditional sales contract.

In addition to electronically approving and subsequently releasing Illinois final approved orders, the Analyst, on a regular basis, accesses the Pending Credit Report to view the current customers with pending credit. The Analyst will research the customer's history, call the assign sales representative, and/or contact the customer before making the final determination on whether the order is released as a final approved order or rejected as a final rejected order. It is this act of approving all Illinois pending credit orders that is the final action necessary to bind the company to an unconditional sales contract. Once the Analyst in Office B approves the order based on reviewing the customer's credit worthiness, the order is released for shipment to the customer's location. At the end of every month, the Analyst in Office B prepares a reconciling report detailing those orders that were approved upon review of orders released by OES, orders that were final approved upon the Analyst's review of the Pending Credit Report, and pending credit orders that were final rejected upon determination by the Analyst.

In addition to the above noted credit function, the Analyst's other responsibilities include the management of customer credit lines and approval of increases to credit limits where appropriate, establishing customer accounts and assisting with daily credit functions including account file maintenance, correspondence, recommend accounts for collection, and phone inquiries. Furthermore, the Analyst will process credit card authorizations.

## **Issue**

Whether the daily review and approval of all Illinois destined orders, the review and status determination of all Illinois destined pending credit orders, updating of credit parameters that are utilized in the automated acceptance of customer orders, the processing of credit releases for customers that require additional credit checks, and the subsequent approval of every Illinois destined order either by fax or electronically conclusively establish CITY2 as the situs of the sale for Illinois Retailers' Occupation Tax ('ROT') purposes such that the state and local tax rate in effect in CITY2 should apply to the sale notwithstanding the fact that certain other elements of the sale may occur elsewhere.

## **Relevant Authorities**

A home rule municipality, like CITY2, may impose a retailers' occupation tax on companies engaged in selling at retail within the municipality. 65 ILCS 5/8-11-1; see Ill. Admin. Code tit. 86, §§ 270.101(a), 270.115(a)(1).

The Department's regulations provide that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling' 86 Ill. Admin. Code 270.115(b)(1). Furthermore, the regulation states that if a purchase order which is an acceptance of the seller's *complete and unconditional* offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule Municipality Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. *Id.*

Therefore, under the Department's regulation, where a sale is situated for municipal retailer's occupation tax hinges on where the offer to sell becomes complete and unconditional. The Department has issued a number of Private Letter Rulings ('PLR') illustrating where a sale is situated. In PLR 87-0340 (May 14, 1987), the Department stated that the determination of where a sale is made is a question of 'fact as to where the purchase order is subject to acceptance. The business procedures or procedures surrounding the making of a binding agreement to sell on the part of a given dealership is going to control the question of which municipality is entitled to the tax.' *Id.*

The facts in PLR 87-0340 deal with an auto dealership headquartered and licensed in 'City A' that conducted two large used car sales in 'City B.' (Although not labeled in the PLR, for reasons of clarity we are referring to the two locations as 'City A' and 'City B'). Although more details about how the transactions took place were not provided, the Department did state, 'if a car dealer receives a purchase order in [City B], but then transmits the purchase order to the dealership location in another municipality where they may run a credit check on the potential buyer for financing purposes or other purposes, this would indicate that the purchase order is not subject to final acceptance at [City B], but rather is subject to final acceptance at the dealership location.' *Id.* The Department indicates that if a credit check is the final step in approving a sale 'completely and unconditionally,' then the sale is situated for Municipal Retailers' Occupation Tax purposes where this credit check is performed.

Finally in PLR 91-0162 (March 5, 1991), dealing with a multi-step approval process, the Department followed its 'complete and unconditional' test by confirming that the situs for sales tax purposes is where the final acceptance step occurred. In that case, an oil marketing and distribution company stated it used the following approval process: First, an order is taken by a customer service clerk who processes the order and determines if the customer has a commercial account. If the customer has a commercial account, the order is sent to the credit manager for credit approval at an unnamed location. If credit is approved, the order then goes to the Executive Vice President (based in the same location) for price determination and pricing authority. The order is then forwarded to the billing/pricing clerk for processing (who is also at the same location).

Once processed, the order is relayed to the commercial sales office in CITY3, Illinois where it goes through a final acceptance process. The commercial sales manager compares each order to a master customer record to verify the accuracy of the customer's name, address, account number, product and quantity ordered, and special care instructions pertaining to delivery. If the order is deemed accurate, the order is accepted. Only after the commercial sales manager accepts an order will the order be faxed to the dispatch center (at a separate location) for release. If an order is somehow inaccurate, the defect must be cured before the product will be released.

The company stated that in addition to sales tax savings for its customers, the CITY3 office is utilized primarily for administrative and personnel cost efficiencies. The company stated that based on its procedure for processing commercial sales, it believes that the ROT should be situated in CITY3, Illinois. Based on the facts the company provided, the Department agreed with the company's conclusion.

The Department's analysis in PLR 87-0340, PLR 87-0262 and PLR 91-0162 illustrates how the Company's transaction process should be treated. The Company receives purchase orders at one location, where the orders are input into the company's computer system, and transmits the pending orders to another location for credit verification. Since the final test is performed in CITY2, the sale will not become 'complete and unconditional' until the approval process is completed there. As a result, the Company's sales should be situated in CITY2 for municipal retailer's occupation tax purposes.

The Company knows of no authority contrary to the above-cited authorities.

### ***Conclusion***

The facts indicate that the Analyst's primary responsibilities are to review and approve all Illinois destined conditionally approved orders and that these activities are the final action necessary to bind the Company to an unconditional sales contract.

Therefore, we respectfully request that the Department issue a Private Letter Ruling stating that the receipt of a customer's acceptance of the Company's unconditional offer to sell at its CITY2 office conclusively establishes CITY2 as the proper situs of the sale for ROT purposes such that the state and local tax rate (including CITY2 HRMROT) in effect in CITY2 applies.

If you have any questions or believe that you cannot rule on this matter, please contact me.

As you know, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

Based upon the facts set forth in your letter, the Analyst's review and approval of all Illinois destined conditionally approved orders are the final actions in the acceptance of the purchase order thereby establishing CITY2 as the jurisdiction whose local tax rate applies to sales by AAA

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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